

## AG Opinion Number 95-1

**TD: Governor January 9, 1995**

**Re: No attorney client relationship exists between individuals who are attorneys and employed by an executive agency and other agency officers and employees.**

As you know, a number of state departments and agencies employ individuals with legal training and experience to perform various administrative functions. Excluding attorneys who serve solely as administrative hearing officers, my staff has identified approximately 100 attorneys now employed by various executive branch agencies. Employment of such administrative legal service officers is not per se prohibited. See 1984 Op. Att'y Gen. 84 48. However, it has become increasingly clear that many of these individuals are being utilized as "in house counsel" to provide services of a legal nature and to advise on the legal implications of various issues before the agency. In recent years these issues have arisen with some frequency, necessitating this official opinion.

More specifically, the question of whether the attorney client privilege can apply in the interaction of the legal services officer with other officers and employees of the agency has arisen. For the reasons discussed below, the question must be answered in the negative.

The Georgia Attorney General is a constitutionally elected official who is required to "act as the legal advisor of the executive department, . . . and shall perform such other duties as shall be required by law." Ga. Const. 1983, Art. V, Sec. III, Para. IV. Consistent with this constitutional mandate, O.C.G.A. § 45 15 34 vests the Department of Law "with complete and exclusive authority and jurisdiction in all matters of law relating to the executive branch of the government."

Only the Attorney General possesses the authority to provide legal services to the executive branch of government. See, e.g., O.C.G.A § 45 15 34.<sup>1</sup> See also *Thompson v. Talmadge*, 201 Ga.

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867, 88El (1947) (where an office is created by constitutional provision, "its scope can not be enlarged or lessened by statute"). The Attorney General controls the conduct of the state's legal business and, equally important, speaks with a single voice for all executive branch agencies on legal matters. 1976 Op. Att'y Gen. 76 93; cf. *United States v. Providence Journal Co.*, 485 U.S. 693, 706

(1988) (the United States Attorney speaks "with one voice before this Court, and with a voice that reflects not the parochial interests of a particular agency, but the common interests of the Government and therefore of all the people."). Thus, with unified representation, there are greater assurances of consistency on legal issues across state government, as well as reduced opportunity for interagency conflict on legal matters.

As noted in Op. Att'y Gen. 84-48, while nothing in the Constitution prohibits executive agencies from employing persons with legal training, whose legal background and abilities appropriately contribute to effective agency operations, in matters of legal representation, both in and out of court, it is only the Attorney General and the Department of Law which may lawfully fulfill this constitutional responsibility. Since the lawyer client relationship may only exist between agency clients and the Attorney General and Department of Law, no privilege recognized in O.C.G.A. §§ 24-9-21(2) and 24-9-24 can attach to communications between agency official;; and legally trained employees fulfilling administrative functions, even though their functions may have legal ramifications or connections. Only communications between the Attorney General's office and agency officials and employees may be protected by the attorney client privilege.

In conclusion, it is my official opinion that, although state agencies may employ persons with legal training and experience to serve as administrative legal service officers, those persons may not provide legal advice or representation to the agency, and no attorney client relationship or privilege arises between the legal services officer and other agency officers or employees, or the agency itself.

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**Endnotes:**

1 Consideration of O.C.G.A. § 45-12-55, which authorizes the Governor to appoint executive counsel within his own office, is outside the scope of this opinion. The Constitution sets forth special duties for the Governor which do not apply to other executive officers.